

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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HUTZLER MANUFACTURING COMPANY, INC.	:	
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	11 Civ. 7211 (PGG) (RLE)
BRADSHAW INTERNATIONAL, INC.,	:	
	:	
	:	
Defendant.	:	
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DECLARATION OF LAWRENCE R. HUTZLER

Lawrence R. Hutzler declares under the penalties of perjury and pursuant to 28 U.S.C. § 1746:

1. I am the President of Hutzler Manufacturing Company, Inc. ("Hutzler").

Hutzler Manufacturing

2. My father, Lothar Hutzler, founded Hutzler in 1938, and the company quickly became a pioneer in plastic housewares.

3. The first products made by the company were plastic cookie cutters, measuring spoons and funnels. In the 1960s, the company began molding cooking and serving utensils with Melamine, the highest quality plastic available. Our company's Danish-design six-piece Melamine serving set won numerous awards and has since been copied by manufacturers all over the world. In the 1970s, the company began producing fiberglass-reinforced nylon utensils, which are now used daily by major fast food chains and other restaurants. In the 1980s, our company introduced a line of unique baking gadgets.

4. Over the past decade, the housewares industry has seen a major shift in structure. There has been tremendous consolidation among retailers and many of the smaller players have gone out of business. Many of our company's customers have also become our "competitors" in the direct importation of products. While our company was one of the first in the industry to secure the sourcing of products overseas, today many of the company's customers have the same ability due to globalization. This has caused the company to take strategic steps and make targeted investments to move up the innovation ladder in order to compete. In particular, our company has had to develop new and unique products itself (or innovate in the use of packaging), instead of relying on our manufacturing partners or selling "knock-off" products, as many importers now do. Our company now focuses on designing products that are unique in features and/or design, and we have taken steps to protect these innovations through the use of utility and design patents. Nearly all of the company's revenue growth comes from new products.

5. Over the past six years, our company has introduced a line of plastic products designed to store and keep fresh various types of produce. This line of products is called the "Food Saver Line." Hutzler is now an industry leader in the sale of plastic produce containers.

6. Some products in the Food Saver Line are designed to resemble the types of produce they store. Two such products are the "Onion Saver" and the "Garlic Saver," the designs of which are protected by U.S. patents.

7. Designing these two products was not an easy task. Each product had its own design challenges and the design process itself was an expensive and time-consuming endeavor. A great deal of time and money was spent working with product development

consultants and 3D designers/model-makers. After all, no two onions (or heads of garlic) look alike. Each product went through numerous iterations before arriving at its final design. The process took between six and nine months for each of the two products. A similar process was undertaken for each of the products in the Food Saver Line.

8. Hutzler's Food Saver Line products have quickly become the company's most popular products. Sales of products in the Food Saver Line represents approximately 63 percent of the company's sales and, specifically, sales of the Onion Saver and Garlic Saver account for 27 percent of the company's sales. The success of these products is a testament to our company's ability to innovate.

The Patents

The Onion Saver Patent

9. On March 13, 2007, the United States Patent and Trademark Office (the "PTO") issued U.S. Patent No. D538,114 ("the '114 Patent"), showing and describing the "ornamental design for an onion container," with Hutzler as the assignee. (Exhibit 1.) Hutzler is the owner of the entire right, title, and interest in and to the '114 Patent. To my knowledge, the '114 Patent is in full force and effect.

10. Since the issue date of the '114 Patent, Hutzler has marked each Onion Saver it has designed, manufactured, and sold in accordance with the '114 Patent with the full patent number for the '114 Patent. Prior to the patent issue date, such products were marked as "patent pending."

The Garlic Saver Patent

11. On May 19, 2009, the PTO issued U.S. Patent No. D592,463 ("the '463 Patent"), showing and describing the "ornamental design for an garlic container," with Hutzler as

the assignee. (Exhibit 2.) Hutzler is the owner of the entire right, title, and interest in and to the '463 Patent. To my knowledge, the '463 Patent is in full force and effect.

12. Since the issue date of the '463 Patent, Hutzler has marked each Garlic Saver it has designed, manufactured, and sold in accordance with the '463 Patent with the full patent number for the '463 Patent. Prior to the patent issue date, such products were marked as "patent pending."

Bradshaw's Infringement of the Patents

13. It has recently come to the company's attention that the '114 Patent and the '463 Patent (the "Patents") are being infringed by Bradshaw International, Inc. ("Bradshaw").

14. It is my understanding that Bradshaw is one of the two largest players in the distribution and sales of housewares to supermarket and mass market retailers. Bradshaw pays annual fees to have exclusive rights to permanent space in most supermarket retailers. This is particularly significant because once a company buys space in a supermarket, the supermarket does not sell space to competitors. On average, a company can buy space for between two and five years. In addition, Bradshaw is the exclusive distributor for utensils and gadgets to a major discount department store.

15. It is my understanding that Bradshaw purchases products that infringe the Patents from suppliers in China (the "Infringing Products").

16. It is my understanding that Bradshaw uses distributors to reach smaller stores, but directly sells the Infringing Products to larger chains in the United States.

17. I have been informed that at the March 6, 2011 International Housewares Show in Chicago, Illinois, Bradshaw first displayed its Infringing Products.

18. I have been informed that Bradshaw began distributing the Infringing Products in Price Chopper Supermarkets on or before May 21, 2011.

19. I have been informed that Bradshaw has distributed the Infringing Products in other supermarket retailers and locations since May 21, 2011.

20. It is my understanding that Bradshaw has offered for sale, and intends to sell and offer for sale, the Infringing Products to companies that have previously purchased products in the Food Saver Line from Hutzler, thereby displacing Hutzler products and harming Hutzler's reputation.

21. It is my understanding that, in addition to copying the Onion Saver and the Garlic Saver, Bradshaw has sold and offered for sale products which directly imitate Hutzler's Lemon/Lime Saver, Pepper Saver, and Tomato Saver.

The Infringing Products

22. Hutzler's Onion Saver product is manufactured based on the design and drawings depicted in the '114 Patent. The onion container being distributed by Bradshaw, named the "Onion Keeper," clearly was manufactured and designed to be identical to our design depicted in the '114 Patent. A comparison of the '114 Patent and defendant's "Onion Keeper" is attached as Exhibit 3. In particular, the bulbous shape of defendant's product, its round bottom with a flattened base, and the line across the product at approximately halfway from its top, appear identical.

23. Hutzler's Garlic Saver product is manufactured based on the design and drawings depicted in the '463 Patent. The garlic container being distributed by defendant, named the "Garlic Keeper," clearly was manufactured and designed to be identical to our design as embodied in the '463 Patent. A comparison of the '463 Patent and defendant's "Garlic

Keeper” is attached as Exhibit 4. In particular, the shape of defendant’s product, its round bottom with a flattened base, the line across the product at approximately two-thirds from its top, and the product’s slits on its base, are identical in every detail.

24. Hutzler and its counsel have advised the defendant of Hutzler’s rights in and to the Patents and of Hutzler’s belief that the products in question infringe the Patents. Bradshaw has not made a substantive response.

Bradshaw Has Irreparably Harmed Hutzler

25. Hutzler and the defendant are direct competitors vying for the business of the same group of customers.

26. Hutzler has built its reputation on the quality and the uniqueness of its products.

27. The Infringing Products are more cheaply constructed, and are priced approximately 25-50 percent lower than Hutzler’s Food Saver Line products.

28. Defendant’s distribution of the Infringing Products has created and will continue to create confusion, irreparably damaging Hutzler’s reputation and goodwill.

29. Defendant’s distribution of the Infringing Products has irreparably decreased and will continue to irreparably decrease the size of Hutzler’s market share and threatens our company’s position as the market leader.

30. Defendant’s distribution of the Infringing Products, if not enjoined, will result in irreparable price erosion of Hutzler’s patented products in that Hutzler will be forced to drastically change its pricing structure in order to compete with lower-priced “knock-off” products. As a result, Hutzler’s reputation will be permanently harmed.

31. Defendant's distribution of the Infringing Products, because they are more cheaply constructed than Hutzler's products, has had and will continue to have an irreparable deleterious effect on customers' general goodwill towards plastic products resembling the type of produce they are designed to store and preserve.

32. Defendant's distribution of the Infringing Products stalled and reversed Hutzler's sales momentum, causing the loss of at least eleven major accounts, and has possibly permanently displaced Hutzler's products in supermarkets.

33. The products in the Food Saver Line are our company's most popular products. Sales of products in the Food Saver Line are responsible for approximately 80 percent of Hutzler's overall sales growth in 2010 – a number particularly impressive considering the depressed state of the housewares market. By the time our company introduced the Onion Saver in 2006, the company's sales had plateaued. If not for the introduction of the Onion Saver and the Garlic Saver, the company's sales likely would have decreased in 2010. The Food Saver Line products are also critical to our company because such products often serve as "gateway" or "introductory" products, meaning these products are often the initial Hutzler products purchased by customers, who are then introduced to other Hutzler products.

34. Sales for the Food Saver Line of products has consistently grown since the products' introduction. Specifically, in year 2007, sales for the Food Saver Line in supermarkets grew by 1472%; in 2008 by 241%; in 2009 by 46%; and in 2010 by 15%. In year 2007, sales for the Onion Saver and the Garlic Saver in supermarkets grew by 1369%; in 2008 by 255%; in 2009 by 34%; and in 2010 by 13%.

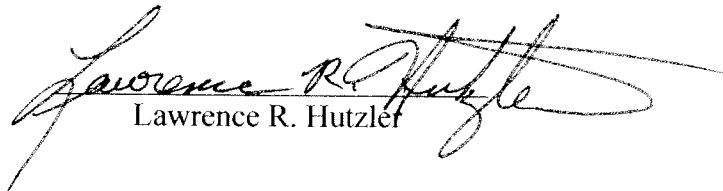
35. By contrast, for the first time since we introduced the Food Saver Line, sales have declined in the second half of 2011, because of the introduction of Bradshaw's Infringing Products.

36. Defendant's distribution of the Infringing Products has had and will continue to have an irreparable, deleterious effect on Hutzler Manufacturing's pricing structure, sales momentum, and profits.

37. If Bradshaw is not enjoined from infringing the Patents, other potential competitors will be encouraged to distribute "knock-off" products resembling the Onion Saver and the Garlic Saver themselves, and will flood the market with even more cheaply-made and cheaply-priced "knock-off" products.

Canaan, CT
October 19, 2011

I declare under penalty of perjury that
the foregoing is true and correct.


Lawrence R. Hutzler